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SENATE BILL 451

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY  
Stuart Ingle

AN ACT

RELATING TO PUBLIC EMPLOYEES; RESTRICTING GIFTS TO CANDIDATES  
FOR THE PUBLIC EMPLOYEES RETIREMENT BOARD; MAKING CERTAIN  
CONTRIBUTIONS TO CANDIDATES FOR THE PUBLIC EMPLOYEES RETIREMENT  
BOARD UNLAWFUL; MAKING CERTAIN EXPENDITURES OF CONTRIBUTIONS BY  
CANDIDATES FOR THE PUBLIC EMPLOYEES RETIREMENT BOARD UNLAWFUL;  
PROVIDING FOR PENALTIES AND CRIMINAL ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees  
Retirement Act:

A. "accumulated member contributions" means the  
amounts deducted from the salary of a member and credited to  
the member's individual account, together with interest, if

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1 any, credited to that account;

2 B. "affiliated public employer" means the state and  
3 any public employer affiliated with the association as provided  
4 in the Public Employees Retirement Act, but does not include an  
5 employer pursuant to the Magistrate Retirement Act, the  
6 Judicial Retirement Act or the Educational Retirement Act;

7 C. "association" means the public employees  
8 retirement association established under the Public Employees  
9 Retirement Act;

10 D. "disability retired member" means a retired  
11 member who is receiving a pension pursuant to the disability  
12 retirement provisions of the Public Employees Retirement Act;

13 E. "disability retirement pension" means the  
14 pension paid pursuant to the disability retirement provisions  
15 of the Public Employees Retirement Act;

16 F. "educational retirement system" means that  
17 retirement system provided for in the Educational Retirement  
18 Act;

19 G. "employee" means any employee of an affiliated  
20 public employer;

21 H. "federal social security program" means that  
22 program or those programs created and administered pursuant to  
23 the act of congress approved August 14, 1935, Chapter 531, 49  
24 Stat. 620, as that act may be amended;

25 I. "final average salary" means the final average

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1 salary calculated in accordance with the provisions of the  
2 applicable coverage plan;

3 J. "form of payment" means the applicable form of  
4 payment of a pension provided for in Section 10-11-117 NMSA  
5 1978;

6 K. "former member" means a person who was  
7 previously employed by an affiliated public employer, who has  
8 terminated that employment and who has received a refund of  
9 member contributions;

10 L. "fund" means the funds included under the Public  
11 Employees Retirement Act;

12 M. "member" means a currently employed,  
13 contributing employee of an affiliated public employer, or a  
14 person who has been but is not currently employed by an  
15 affiliated public employer, who has not retired and who has not  
16 received a refund of member contributions; "member" also  
17 includes the following:

18 (1) "adult correctional officer member" means  
19 a member who is an adult correctional officer or an adult  
20 correctional officer specialist employed by a correctional  
21 facility of the corrections department or its successor agency;

22 (2) "hazardous duty member" means a member who  
23 is a juvenile correctional officer employed by the children,  
24 youth and families department or its successor agency;

25 (3) "municipal detention officer member" means

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1 a member who is employed by an affiliated public employer other  
2 than the state and who has inmate custodial responsibilities at  
3 a facility used for the confinement of persons charged with or  
4 convicted of a violation of a law or ordinance;

5 (4) "municipal fire member" means any member  
6 who is employed as a full-time nonvolunteer firefighter by an  
7 affiliated public employer and who has taken the oath  
8 prescribed for firefighters;

9 (5) "municipal police member" means any member  
10 who is employed as a police officer by an affiliated public  
11 employer, other than the state, and who has taken the oath  
12 prescribed for police officers; and

13 (6) "state police member" means any member who  
14 is an officer of the New Mexico state police and who has taken  
15 the oath prescribed for such officers;

16 N. "membership" means membership in the  
17 association;

18 O. "pension" means a series of monthly payments to  
19 a retired member or survivor beneficiary as provided in the  
20 Public Employees Retirement Act;

21 P. "political committee" means two or more persons,  
22 other than members of a candidate's immediate family or  
23 campaign committee or a husband and wife who make a  
24 contribution out of a joint account, who are selected,  
25 appointed, chosen, associated, organized or operated primarily

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1 for a political purpose. For the purposes of this subsection,  
2 "political purpose" means influencing or attempting to  
3 influence an election or preprimary convention, including a  
4 constitutional amendment or other question submitted to the  
5 voters. "Political committee" includes:

6 (1) political action committees or similar  
7 organizations composed of employees or members of a  
8 corporation, labor organization, trade or professional  
9 association or another similar group that raises, collects,  
10 expends or contributes money or any other thing of value for a  
11 political purpose;

12 (2) a single individual who by the  
13 individual's actions represents that the individual is a  
14 political committee; and

15 (3) a person or an organization of two or more  
16 persons that within one calendar year expends funds in excess  
17 of five hundred dollars (\$500) to conduct an advertising  
18 campaign for a political purpose;

19 [P.] Q. "public employer" means the state, any  
20 municipality, city, county, metropolitan arroyo flood control  
21 authority, economic development district, regional housing  
22 authority, soil and water conservation district, entity created  
23 pursuant to a joint powers agreement, council of government,  
24 conservancy district, irrigation district, water and sanitation  
25 district, water district and metropolitan water board,

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1 including the boards, departments, bureaus and agencies of a  
2 public employer, so long as these entities fall within the  
3 meaning of governmental plan as that term is used in Section  
4 414(d) of the Internal Revenue Code of 1986, as amended;

5 [Q.] R. "refund beneficiary" means a person  
6 designated by the member, in writing, in the form prescribed by  
7 the association, as the person who would be refunded the  
8 member's accumulated member contributions payable if the member  
9 dies and no survivor pension is payable or who would receive  
10 the difference between pension paid and accumulated member  
11 contributions if the retired member dies before receiving in  
12 pension payments the amount of the accumulated member  
13 contributions;

14 [R.] S. "retire" means to:

15 (1) terminate employment with all employers  
16 covered by any state system or the educational retirement  
17 system; and

18 (2) receive a pension from a state system or  
19 the educational retirement system;

20 [S.] T. "retired member" means a person who has met  
21 all requirements for retirement and who is receiving a pension  
22 from the fund;

23 [T.] U. "retirement board" means the retirement  
24 board provided for in the Public Employees Retirement Act;

25 [U.] V. "salary" means the base salary or wages

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1 paid a member, including longevity pay, for personal services  
2 rendered an affiliated public employer. "Salary" shall not  
3 include overtime pay, allowances for housing, clothing,  
4 equipment or travel, payments for unused sick leave, unless the  
5 unused sick leave payment is made through continuation of the  
6 member on the regular payroll for the period represented by  
7 that payment, and any other form of remuneration not  
8 specifically designated by law as included in salary for Public  
9 Employees Retirement Act purposes. Salary in excess of the  
10 limitations set forth in Section 401(a) (17) of the Internal  
11 Revenue Code of 1986, as amended, shall be disregarded. The  
12 limitation on compensation for eligible employees shall not be  
13 less than the amount that was allowed to be taken into account  
14 under the state retirement system acts in effect on July 1,  
15 1993. For purposes of this subsection, "eligible employee"  
16 means an individual who was a member of a state system before  
17 the first plan year beginning after December 31, 1995;

18 ~~[V.]~~ W. "state system" means the retirement  
19 programs provided for in the Public Employees Retirement Act,  
20 the Magistrate Retirement Act and the Judicial Retirement Act;

21 ~~[W.]~~ X. "state retirement system acts" means  
22 collectively the Public Employees Retirement Act, the  
23 Magistrate Retirement Act, the Judicial Retirement Act and the  
24 Volunteer Firefighters Retirement Act; and

25 ~~[X.]~~ Y. "survivor beneficiary" means a person who

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1 receives a pension or who has been designated to be paid a  
2 pension as a result of the death of a member or retired  
3 member."

4 Section 2. Section 10-11-130.1 NMSA 1978 (being Laws  
5 1999, Chapter 153, Section 1) is amended to read:

6 "10-11-130.1. RESTRICTIONS ON RECEIPT OF GIFTS--  
7 [~~RESTRICTION~~] RESTRICTIONS ON CAMPAIGN CONTRIBUTIONS--REQUIRED  
8 REPORTING--PENALTIES--CRIMINAL ENFORCEMENT.--

9 A. Except for gifts of food or beverage given in a  
10 place of public accommodation, consumed at the time of receipt,  
11 not exceeding fifty dollars (\$50.00) for a single gift and the  
12 aggregate value of which gifts may not exceed one hundred fifty  
13 dollars (\$150) in a calendar year, neither a retirement board  
14 member nor an employee of the retirement board or association  
15 shall receive or accept anything of value directly or  
16 indirectly from a person who:

17 (1) has a current contract with the retirement  
18 board or association;

19 (2) is a potential bidder, offeror or  
20 contractor for the provision of services or personal property  
21 to the retirement board or association;

22 (3) is authorized to invest public funds  
23 pursuant to state or federal law or is an employee or agent of  
24 such a person; or

25 (4) is an organization, association or other

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1 entity having a membership that includes persons described in  
2 Paragraphs (1) through (3) of this subsection.

3 B. No person who is a candidate in a primary or  
4 general election for a position that qualifies the person for  
5 ex-officio membership on the retirement board and no member  
6 serving ex officio on the retirement board [~~and no person who~~  
7 ~~is a nominee for retirement board membership by election by~~  
8 ~~some or all of the members of the association pursuant to the~~  
9 ~~Public Employees Retirement Act]~~ shall accept anything of a  
10 value of more than twenty-five dollars (\$25.00) as a  
11 contribution to an ex-officio member's statewide campaign in a  
12 primary or general election [~~or as a contribution to the~~  
13 ~~campaign of a nominee for membership on the board as a member~~  
14 ~~elected by all or some of the members of the association]~~ from  
15 a person who:

16 (1) has a current contract with the retirement  
17 board or association;

18 (2) is a potential bidder, offeror or  
19 contractor for the provision of services or personal property  
20 to the retirement board or association;

21 (3) is authorized to invest public funds  
22 pursuant to state or federal law or is an employee or agent of  
23 such a person; or

24 (4) is an organization, association or other  
25 entity having a membership that includes persons described in

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1 Paragraphs (1) through (3) of this subsection.

2 C. A candidate for retirement board membership by  
3 election by some or all of the members of the association  
4 pursuant to the Public Employees Retirement Act shall not  
5 accept anything of a value of more than seventy-five dollars  
6 (\$75.00) from a person or organization to the candidate's  
7 campaign whether made directly to the candidate, a political  
8 committee or to some other entity supporting the candidate's  
9 election. A candidate as described in this subsection shall  
10 not accept anything of value to the campaign from a person who:

11 (1) has a current contract with the retirement  
12 board or association;

13 (2) is a potential bidder, offeror or  
14 contractor for the provision of services or personal property  
15 to the retirement board or association;

16 (3) is authorized to invest public funds  
17 pursuant to state or federal law or is an employee or agent of  
18 such a person; or

19 (4) is an organization, association or other  
20 entity having a membership that includes persons described in  
21 Paragraphs (1) through (3) of this subsection.

22 [~~C.~~] D. Within ten days after an election in which  
23 one or more board members are elected by some or all of the  
24 members of the association pursuant to the Public Employees  
25 Retirement Act, all persons who were candidates for board

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1 membership in that election shall file with the association a  
2 report disclosing all contributions to their respective  
3 campaigns whether made directly to the candidate, a political  
4 action committee or to some other entity supporting the  
5 candidate's election and an accounting of expenditures of the  
6 campaign. The contributions shall be reported by amount and  
7 specific source. Within sixty days after the election, the  
8 association shall publish the reports required by this  
9 subsection.

10 E. It is unlawful for a person, political committee  
11 or some other entity supporting a person who is a candidate for  
12 retirement board membership by election by some or all of the  
13 members of the association pursuant to the Public Employees  
14 Retirement Act to make, or a candidate or the candidate's agent  
15 to accept, a contribution that is reported as coming from one  
16 person or entity when the candidate or the candidate's agent  
17 knows that the contribution is actually from another person or  
18 entity that directed that the contribution not be publicly  
19 reported.

20 F. It is unlawful for a candidate for retirement  
21 board membership by election by some or all of the members of  
22 the association or for the candidate's agent to make an  
23 expenditure of contributions received, except for the following  
24 purposes:

25 (1) expenditures of the campaign;

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1                   (2) donations to the retirement board credited  
2 to the income fund pursuant to the Public Employees Retirement  
3 Act;

4                   (3) donations to the general fund; and

5                   (4) donations to an organization to which a  
6 federal income tax deduction would be permitted under  
7 Subparagraph (A) of Paragraph (1) of Subsection (b) of Section  
8 170 of the Internal Revenue Code of 1986, as amended.

9                   G. A person who knowingly and willfully violates  
10 any provision of this section is guilty of a misdemeanor and  
11 shall be punished by a fine of not more than one thousand  
12 dollars (\$1,000) or by imprisonment for not more than one year  
13 or both.

14                   H. This section may be enforced by the attorney  
15 general or the district attorney in the county where an alleged  
16 violation resides, where an involved political committee has its  
17 principal place of business or where the violation occurred."